



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

MICHAEL SPELL,
Plaintiffs,

v.

FRASER BOILER AND SHIP
REPAIR, L.L.C., et al,
Defendants.

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Civil Action No. 1:04-CV-542

ORDER ON VOLUNTARY DISMISSAL OF DEFENDANT
AMERICAN OVERSEAS MARINE CORPORATION

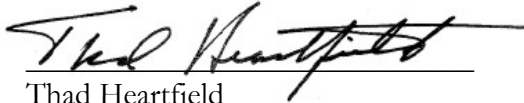
Before the Court is Plaintiff Michael Spell's *Agreed Motion to Dismiss as to Defendant, American Overseas Marine Corporation* [Clerk's doc. #63]. Plaintiff requests that the Court dismiss his claims against that Defendant without prejudice.

Rule 41(a)(1) pertains to voluntary dismissal if a Plaintiff files "a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs." FED. R. CIV. P. 41(a)(1). Because Defendant American Overseas Marine Corporation did not appear before Plaintiff filed his motion to dismiss, Rule 41(a)(1) applies and the Defendant should be dismissed without prejudice. Having considered the voluntary *Motion to Dismiss*, the Court finds it to be meritorious under Rule 41.

The Court accordingly **ORDERS** that the *Agreed Motion to Dismiss as to Defendant, American Overseas Marine Corporation* [Clerk's doc. #63] is **GRANTED**; and

Defendant American Overseas Marine Corporation is **DISMISSED** as a party to this action, without prejudice.

SIGNED this the **3** day of **August, 2005**.


Thad Heartfield
United States District Judge